IN THE HIGH COURT OF BOMBAY AT PANAJI

CRIMINAL MISC. APPLICATION NO. 237 OF 2006

S T A T E
through Central Bureau
of Investigation,Anti Corruption Branch
having office at Surekha Bldg.
1st Floor, Near Doordarshan,
Kendra Altinho,
Panaji-Goa. ..... Petitioner

V e r s u s

1. Shri Parmeshwaran Subramani
   s/o. Late L. P. Aiyer,
   Commissioner of Central Excise &
   Custom Bangalore R/o.7/1/Cambell
   Cross Road Vivek Nagar,
   Bangalore – 560047.
2. Shri Dharmendra Gautam
   Inspector of Central Excise, Goa
   Rahimpur District, Patna,
   Bihar, 803211. ..... Respondents

Mr. S. R. Rivankar, Special Public Prosecutor for the Petitioner.

Mr. R. V. Kamat, Advocate for Respondent no.1.

Mr. D. Pangam, Advocate for Respondent no.2.

CORAM: N. A. BRITTO, J.

DATE: 14th September, 2006.

ORAL ORDER

The applicant-CBI has sought condonation of delay of 35 days in filing revision application against the Order dated 06.01.2006 of the learned Special Judge discharging the respondents under Section 12 of the Prevention of Corruption Act, 1988, read with Section 120-B of I.P.C.

2. Heard the learned Special Public Prosecutor on behalf of the applicant and Shri R. V. Kamat and D. Pangam, the learned Counsel on behalf of the respondents-accused. The application dated 05.06.2006 to condone the delay of 35 days was opposed by both the respondents by filing affidavits in reply. On 23.08.2006, on behalf of the applicants, leave was sought to file additional affidavit and accordingly the same was filed. The respondents were granted leave to file further affidavits if they so desired but no further affidavits had been filed by them.

3. There is no dispute that the impugned Order was passed on 06.01.2006 and the certified copy of the same was obtained by the applicant on 03.01.2006, and on 04.02.2006, the special Counsel appearing

on behalf of the applicant opined that the said impugned Order was required to be challenged in revision.

4. The Inspector of Police, CBI, ACB, Goa , in his additional affidavit has tried to explain the delay of 35 days in filing the revision application. As stated by him in his additional affidavit dated 01.09.06, after the Special Counsel gave his opinion on 04.02.2006, the file was forwarded to the Deputy Inspector General of Police, CBI, Mumbai, by letter dated 06.02.2006 and it was placed before the said D.I.G. on 10.02.2006. The D.I.G. on 13.02.2006, put up the matter to the Joint Director, West Zone, CBI, Mumbai, with his remarks and the said Joint Director (W.Z.) agreed for filing an appeal against the said Order of discharge and marked the file to the Addl. Director, CBI (A), New Delhi. The file was received in the CBI Head office at New Delhi on 15.02.2006, and on the same day, the same was marked to the Director of Prosecution, CBI, New Delhi i.e. on 15.02.2006. It is stated that the Director of Prosecution marked it to the Deputy Legal Adviser on 17.02.2006 to study and to speak and on 23.02.2006, the Director of Prosecution, gave his opinion for filing the appeal against the said Order dated 06.01.2006 of the learned Special Judge.

5. The file was received back at Mumbai in the office of Joint Director (W.Z.), CBI on 28.02.2006 and on 01.03.2006, the DIG, CBI, instructed the Superintendent of Police, CBI, (Goa), to comply with the orders.

6. The file was received by SP, CBI Goa on 06.03.2006. On 10.03.2006, the SP, CBI, (Goa), forwarded the draft revision petition to DIG, Mumbai, and the said DIG on 23.03.2006, opined that the approval be taken from the Ministry/Department of Personnel and Training, New Delhi, for filing the revision and a letter in that regard was sent by the Joint Director, (W.Z.) on 24.03.2006 to the Director (Vigilance) Department of Personnel & Training and a reminder was sent in that regard to the Department of Personnel and Training on 25.04.2006 and on 04.05.2006, the Additional Government, Department of Legal Affairs, New Delhi, opined to challenge the said Order discharging the accused. It is stated that on 11.05.2006, a letter was sent by the Department of Personnel and Training to CBI, Mumbai, giving permission to file revision petition under intimation to them and the same was received in the Office of the Joint Director (W.Z.), Mumbai on 25.05.2006 and was sent to Goa Branch on 29.05.2006.

Reliance has been placed on the Communication dated 11.05.2006. There is no dispute that the application under consideration came to be filed on 05.06.2006.

7. The learned Special P. P. and the Counsel appearing on behalf of the respondents did not dispute that the file was not required to be moved to higher authorities after 23.02.2006, after the Directorate of Prosecution gave his opinion for filing the revision, in the light of Clause 23.4 of the CBI Crime Manual, a copy of which was produced, on behalf of the applicant, and which reads as follows:-

> "23.4 The Branch Sr. PP should ensure that the certified copy of judgments in all cases together with the comments of the I.O., the SP and his own comments are forwarded to the DLA/DIG at least two months before expiry of the limitation period to allow in depth examination of issues by the Directorate of Prosecution and the Directorate of Prosecution and the Director, CBI before a proposal is moved to challenge the judgment in appeal or revision."

8. Nevertheless, Shri Rivankar, the learned Special P.P. on behalf of the applicant has also referred to Clause 23.1, which reads as follows:-

> "23.1 – After the Judgment is pronounced in a CBI case, a report on conviction/acquittal/discharge, shall be forwarded by the Sr. P.P. To Regional Department of Legal Administration with a copy to the Branch SP and DIG who will intimate the concerned Department/Undertaking or Ministry to which the accused public servant belongs. A copy will also be sent to the concerned Administrative Ministry trough which the sanction for prosecution was obtained in the name of President of India. Even if, it is contemplated to file appeals/revisions in such cases, reports shall not be held up."

Shri Rivankar, the learned Special P.P. submits that although, strictly speaking, approval of the Ministry/Department of Personnel & Training, New Delhi was not necessary but in this case they sought the same under a bonafide belief that it was required and in that process, there was a delay of about 35 days. Shri Rivankar, further submits that there was no inaction on the part of the Police Inspector/I.O. in obtaining the said approval. Shri

Rivankar further submits that a number of files have to be dealt with at the Ministry level and for that reason, the Ministry/Department of Personnel & Training, New Delhi, took some time to process the proposal of the applicant. Referring to the communication dated 11.05.2006 of the Director (Vigilance) of the Department of Personnel & Training, Shri Rivankar submits that it clearly shows that it is the said Department of Personnel and Training, who at their own level, had examined the proposal of the applicant in consultation with the Ministry of Law, Department of Legal Affairs, before sending the said communication dated 11.05.2006 to the Joint Director, CBI, at Mumbai. Shri Rivankar has placed reliance on the cases of ***State of Haryana v. Chandra Mani & Ors. (AIR 1996 S.C. 1623)*** and ***State of Nagaland v. Lipok Ao and Others ((2005) 3 S.C.C. 752)***.

Learned Counsel on behalf of the respondents, on the other hand, submit that if the file was not required to be moved beyond Director of Prosecution, CBI, New Delhi, after 23.02.2006, then any period of time wasted by the applicant could not be considered to explain sufficient cause. Learned Counsel on behalf of both the parties have placed reliance on the cases of ***Union of India v. Tata Yodogawa Limited (1988 (38) E.L.T. 739***

(S.C.)) and ***State of Rajasthan v. Nav Bharat Consatruction Co.((2005) 11 S.C.C. 197).*** Learned Counsel has also placed reliance on the case of ***State of Tripura v. Tripura Technical Employees' Association Agartala & Anr. (2004 A I H C 2080)*** as well as on a decision of this Court in the case of ***Laxman N. Divekar v. State of Maharashtra (1998(1) Mh.L.J. 745)***. By now atleast three principles are well settled, the first is that although there is no separate standard for the State viz a viz a private party, the State is given little more latitude in matters of explaining the delay in relation to private individuals. This was first stated in the case of ***Union of India v. Tata Yodogawa Limited(supra),*** when the Supreme Court, speaking through three learned Judges stated that Government is being impersonal takes longer time in filing the Appeals/Petitions than the private Bodies and even if that latitude is given there must be some way or attempt to explain the the cause of such delay, and, found in the facts of that case that the State had not explained what were the legal problems it faced in filing the Special Leave Petition. Again, the Supreme Court speaking through three learned Judges in the case of ***State of Haryana v. Chandra Mani & Ors. (Supra),*** observed that when the State is the applicant praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued

with the note-making, file-pushing, and passing-on-the buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve, but the State represents collective cause of the community. It is axiomatic that decisions are taken by Officers/Agents proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay intentional or otherwise is a routine. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default, no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "*sufficient cause*" should, therefore, be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The facts which are peculiar to and characteristic of the functioning of the Governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice-oriented process. The Court should decide the matters on merits unless the case is hopelessly without merit. Again, Supreme Court in the case of ***State of Nagaland v. Lipok Ao and Others (Supra),*** referred to its various previous decisions and observed that the law of limitation is, no doubt, the same for a private citizen as for Governmental authorities. Referring to the case reported in ***G. Ramegowda***

v. Spl. Land Acquisition Officer, ((1988) (2) S.C.C. 142, the Supreme Court noted that Government decisions are proverbially slow encumbered, as they are, by a considerable degree of procedural red tape in the process of their making. A certain amount of latitude is, therefore, not impermissible. It is rightly said that those who bear responsibility of Government must have "a little play at the joints". Due recognition of these limitations on governmental functioning – of course, within reasonable limits – is necessary if the judicial approach is not to be rendered unrealistic. It would, perhaps, be unfair and unrealistic to put Government and private parties on the same footing in all respects in such matters. Implicit in the very nature of governmental functioning is procedural delay incidental to the decision-making process. The delay of over one year was accordingly condoned. The Court also referred to the case reported in ***Special Tehsildar, Land Acquisition v. K. V. Ayisumma ((1996) 10 S.C.C. 634)*** and noted that adoption of strict standard of proof sometimes fails to protract public justice and it would result in public mischief by skillful management of delay in the process of filing an appeal. The second principle which is well settled is that whether there is sufficient cause or not, has to be considered in the light of facts proved in each case and the discretion to be exercised must proceed on the material which is placed

before the Court to spell out whether a case is sufficient or not. The expression is to be construed liberally but at the same time it does not mean that the Court should readily accept whatever is stated to explain the default. The third principle, as stated in the case of ***N. Balakrishnan v. M. Krishnamurthy (1998 (7) S.C.C. 123***), is that acceptability of explanation for the delay which is the sole criterion and not the length of delay which is relevant. The Supreme Court also observed in this case that in the absence of anything showing malafide or deliberate delay as a dilatory tactic, Court should normally condone the delay though at the same time, the Court should keep in mind the expenses which are incurred by the opposite party to compensate him accordingly.

9. The cases of ***State of Tripura v. Tripura Technical Employees' Association Agartala & Anr.***(supra), ***Union of India v. Tata Yodogawa Limited*** (supra), ***State of Rajasthan v. Nav Bharat Consatruction Co.*** (supra) as well as ***Laxman N. Divekar v. State of Maharashtra*** (supra), were decided on facts which were peculiar to those cases. As far as the case at hand is concerned, and as already stated, it is conceded on behalf of the applicant that strictly speaking, the file was not required to be moved further to the Department of Personnel and Training for them to have given

their approval in consultation with the ministry of law after the Director of Prosecution had given its nod to file revision on 23.02.2006 but the fact remains that the file, as stated by the learned Special Public Prosecutor, was referred to the said Department of Personnel and Training as required by Clause 23.1 of the said CBI – Criminal Manual and the SP, CBI (Goa), as well as the Police Inspector/I.O., awaited approval of the said Department of Personnel and Training believing that it was so required and only after the same was received on 11.05.2006, that the present application for condonation of delay came to be filed on 05.06.2006. The term "*sufficient cause*" has always been construed liberally. Although strictly speaking, the permission of the Department of Personnel and Training was not required, it appears that the CBI Officers particularly SP, CBI (Goa), awaited for the same for filing the revision petition, and in that process, there was a delay of 35 days. The conduct of the said Officer/s does not show that there was any inaction or negligence or lack of bonafide on their part. In case the delay is not condoned, it is a public cause which is bound to suffer. In case it is condoned the matter can be examined and decided on merits.

10. Considering the facts stated on behalf of the applicant in the additional affidavit filed, in my view, this is a fit case to condone the delay.

Application is, therefore, hereby granted.

N. A. BRITTO, J.

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